

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Claims 1-22 remain pending in the present application. No amendments have been made to the claims.

Claims 1-3 and 5-10 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,958,075 to Mace et al. ("the '075 patent"). In addition, claims 4 and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over the '075 patent in view of U.S. Patent No. 4,228,352 to Adrian ("the '352 patent"). Applicant respectfully traverses these rejections for the reasons presented below.

Independent claim 1 recites a sidestream gas sampling system that includes a capillary tube adapted to communicate the flow of gas from the gas measurement site, and a differential pressure transducer in fluid communication with the capillary tube. More specifically, the differential pressure sensor is in fluid communication with both a first portion of the capillary tube and a second portion of the capillary tube. The first portion and the second portion are spaced sufficiently far apart from one another such that a pressure differential exists between these locations.

The '075 patent discloses a gas analyzer that includes a tube 122, 130 and a pressure sensor 138 (see FIG. 2). However, pressure sensor 138 is in fluid communication with *only one* location of tube 122, 130. As such, it cannot and does not measure a differential pressure between two locations of the tube. It merely measures the pressure at one location in tube 120, 130, for example to detect whether the tube is kinked. Nothing in the '075 patent teaches or suggests that the pressure measurement be taken at two different locations in which a pressure drop exists between these locations. If the Examiner maintains this rejection, applicant respectfully requests that the Examiner identify both of the locations along the tubing in the '075 patent where the pressure is connected to the tubing.

Claim 1 also recites that the controller, which is coupled to the differential pressure transducer and the fluid transferring means, measures the flow of gas based on the output of the differential pressure transducer. Because pressure sensor 138 in the '075 patent is not a differential pressure sensor it cannot be used to measure the *flow* of the gas in tube 122, 130. It should be noted that there is a fundamental difference between a pressure measurement and a flow measurement. The device taught by the '075 patent is capable of making a pressure measurement. However, nothing in this patent teaches or suggests making a flow measurement.

Claim 1 also recites that the controller controls the flow of gas via the flow generating means based on the measured flow. In an exemplary but non-limiting embodiment, the flow generating means is controlled based on the measured flow so that that the flow of gas through the sample cell is relatively constant. Nothing in the '075 patent teaches or suggests controlling pump 30 based on the measured *flow*.

For the reasons presented above, applicant respectfully submits that independent claim 1 is not anticipated or rendered obvious by the cited references. Independent claim 11 is generally similar to claim 1. Thus, the distinctions between the present invention and the cited references noted above with respect to claim 1 are equally applicable to claim 11. Claims 2, 3, 5-10 and 11-20 are also not anticipated or rendered obvious due to their dependency from independent claims 1 or 11. The '352 patent is cited for the proposition that it is known to provide bends in a tube. The '352 patent does not teach or suggest the features of the independent claims missing from the '075 patent. Accordingly, applicant respectfully requests that the above rejection of claims 1-3 and 5-20 be withdrawn.

Claims 21 and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over the '075 patent. Applicant respectfully traverses this rejection for the reasons presented below.

Independent method claim 21 recites measuring a pressure differential with a differential pressure transducer in fluid communication with the first portion and the second portion of the capillary tube. As noted above with respect to independent claim 1, the '075 patent does not teach or suggest measuring a *differential* pressure. More specifically, it does not teach or suggest providing a pressure transducer in fluid communication with *two portions* of the

capillary tube. Likewise, the '075 patent does not teach or suggest controlling the flow of gas based on an output of the *differential* pressure transducer.

For the reasons presented above, applicant respectfully submits that independent claim 21 is not rendered obvious by the cited references. Claim 22 is also not rendered obvious due to its dependency from independent claim 21. Accordingly, applicant respectfully requests that the above rejection of claims 21 and 22 be withdrawn.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

By Michael W. Haas

Michael W. Haas

Reg. No.: 35,174

Tel. No.: (724) 387-5026

Fax No.: (724) 387-5021

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525

Note: The Commissioner is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.